IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3503 OF 2005

Dinshaw Kaiki Tamboli ...Applicant

Vs.

Neville Mukadam & Anr. ...Respondents

...

Mr. Sanjog Parab i/b M/s. Mulla & Mulla &
Craigie Blunt & Caroe for Applicant
Mr. S.R.Shinde, A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JUNE 24,2005

P.C.

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant is seeking quashing of process issued by the learned Metropolitan Magistrate, 33rd Court, Ballard Estate, Mumbai in C.C.No.1258/S/2003. In the said case, process is issued under Sections 499 and 500 of IPC.

3. The applicant had earlier preferred application

for recalling of process before the learned Magistrate. The said application came to be rejected. The order of the learned Magistrate rejecting the application for recall of process, came to be challenged before the Sessions Court. The said revision came to be dismissed by the Sessions Court on the ground that in view of the observations of the Supreme Court in the case of **Subramanium Sethuraman,** it is not permissible for the Magistrate to recall or reconsider the decision issuing process. However, in my opinion, in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and others [2004 (4) Mh.L.J. 274.] and Subramanium Sethuraman Vs. State of Maharashtra [2005(1) Mh.L.J. 626],** it is clear that the Magistrate does not have the power to recall the process issued by him. Hence, no fault can be found with the order of the learned Sessions Judge rejecting the revision preferred against the order of the Magistrate rejecting the application for recall of process.

4. For the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st

June, 2005 in Cri.Application No.550 of 2005, in my view, it is clear that the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicant prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the applicant to prefer the necessary revision before the concerned Sessions Court. It is made clear that revision shall be preferred in respect of the order of the Magistrate issuing process and not in respect of the order of the Magistrate rejecting the application for recall of process.

6. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

7. Criminal Application is disposed of.

[V.K.TAHILRAMANI,J.]